IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
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CLERK ALBUQUERQUE

JACK MAES,

Plaintiff,

vs. **Cause No.** CIV-02-0196 MCA WWD

CITY OF LAS VEGAS, a chartered New Mexico municipality, MIKE GALLEGOS, as City Councilor and individually, MIKE TRUJILLO, as City Councilor and individually, LOUIE TRUJILLO, as City Councilor and individually, GENE ROMERO, as City Councilor and individually, and MARK GUERIN, as City Councilor and individually,

Defendants. **JURY DEMAND**

COMPLAINT FOR DAMAGES

COMES NOW Plaintiff Jack Maes, by and through his attorney of record, J. Edward Hollington of J. Edward Hollington & Associates, P.A., and for his Complaint for Damages states as follows:

I. JURISDICTION

1. This action is brought pursuant to 42 U.S.C. §1983 and 1985, First, Fifth, and Fourteenth Amendments to the United States Constitution, and 28 U.S.C. §1367.

2. Venue is proper before this Court because all actions, omissions, and transactions occurred within the State of New Mexico.

II. STATEMENT OF FACTS

1. Plaintiff, Jack Maes, (hereinafter "Mr. Maes"), is a resident of Las Vegas, San

Miguel County, New Mexico. Individual Defendants are residents of Las Vegas, San Miguel County, New Mexico.

2. Defendants City of Las Vegas, (hereinafter "City"), is a chartered New Mexico municipality pursuant to Article 10, Section 6 of the New Mexico Constitution and NMSA 1978, §3-15-1 et seq. (1978).

3. Plaintiff, Mr. Maes, was employed as City Manager of the City of Las Vegas from April 19, 2000 until May 30, 2001.

4. Defendants MIKE GALLEGOS, MIKE TRUJILLO, LOUIE TRUJILLO, GENE ROMERO, and MARK GUERIN, at all times material to this action were elected members of the City Council.

5. The position of City Manager is a position designated by the Las Vegas City Charter which provides that "removal by the Mayor and Council shall be effective only after a formal notice and public hearing".

6. Plaintiff, Mr. Maes, signed a contract with the City of Las Vegas for employment as City Manager on April 19, 2000. The contract provided that the City Manager could only be terminated for cause.

7. The initial term of the contract was six months. During that six month period, Plaintiff successfully performed duties as the City Manager and Defendants gave him a vote of confidence and extended his employment contract.

8. Defendants did not conduct any performance evaluations of the Plaintiff's work as City Manager after November, 2000.

9. Plaintiff satisfactorily performed his job duties and responsibilities as City

Manager.

10. The Plaintiff's employment contract provided that employment as City Manager was subject to the Las Vegas Personnel Ordinance except for progressive discipline and grievance.

11. The Las Vegas Personnel Ordinance in effect at the time Mr. Maes' was terminated was Personnel Ordinance #86-8. Ordinance 86-8 provides for discipline only for cause after an employee completes a six month probationary period and "cause" is described in Section 2-6-9.1 of the Personnel Ordinance [86-8].

12. After November, 2000, Plaintiff voiced concerns to the Defendants that Defendant Mike Gallegos was storing his personal recreational vehicle [RV], at the City Airport Hangar for free. Plaintiff pointed out potential security, liability and appearances of impropriety issues to Defendants and others. He expressed his concerns in writing and at public meetings.

13. Defendant Gene Romero, is the owner of Pat Romero Feed and Bldg Supply Company in the City of Las Vegas. Plaintiff was informed that Defendant Romero's business was providing building specifications for City Building projects and then over 80% of City Building projects were awarded to Defendant Romero's business. Most of the Building contracts involved Federal Housing and Urban Development (HUD) funds.

14. Plaintiff advised Defendants that having a Councilor's business prepare building specifications for public requests for proposals, then awarding over 80% of those contracts to Councilor's business probably violated conflict of interest laws, HUD regulations and presented an appearance of impropriety.

15. Plaintiff spoke out on these matters by written memos, statements at public

hearings and to individual Defendants.

16. Plaintiff was criticized by the Defendants for making "an issue" out of the Defendant Councilor's business winning over 80% of contracts.

17. Plaintiff knew that because Federal funds were involved in the building contracts, the City could face problems from regulatory violations. He informed HUD officials of the situation with Defendant Romero's business and the building specifications and contracts. The HUD officials initiated an investigation.

18. Plaintiff also learned that Defendant Mike Trujillo's daughter owed the City of Las Vegas over $4,000 for unpaid utility bills. He was advised of this when he learned that the Councilor's daughter was requesting a deposit waiver for a new utility hook-up. Plaintiff inquired why collection efforts had not been made against this seriously delinquent account and the response was "she's the daughter of Defendant Mike Trujillo, City Councilor."

19. Plaintiff wrote a memo to the Mayor describing the improper and unfair favoritism being shown to a relative of a Councilor, Mike Trujillo.

20. After Plaintiff's discussions, disclosures and comments about improper conduct by Defendants, rumors started that he would be fired.

21. On the afternoon of May 30, 2001, at approximately 3:00 p.m., Plaintiff received a "Notice of Contemplated Action" letter from Dave Romero, Jr., Attorney for the City of Las Vegas. The letter notified Plaintiff that "...the Council will determine whether you will continue with your employment with the City on May 30, 2001 at 6:00p.m. at City Council Chambers".

22. Plaintiff was not given advance notice of any evidence to be presented against him nor any specific reason why Defendants were considering terminating his employment.

23. The Council convened a special meeting at 6:00 p.m. on May 30, 2001, and immediately proceeded to go into a closed, non-public executive session. When the Council came out of the executive session, it announced the termination of Plaintiff's employment.

24. Plaintiff was present at the May 30, 2001, Council meeting. He was not given an explanation of any specific charges or evidence which the Defendants relied on in deciding his fate as City Manager.

25. Plaintiff was given no opportunity to refute, explain or answer any questions or concerns the Defendants had about his performance before they fired him.

26. There was no public hearing on May 30, 2001, because no one was permitted to speak about Plaintiff's job performance as City Manager before Defendants decided to fire Plaintiff.

27. The Defendants' actions in terminating the Plaintiff were done under "color of law".

28. The Defendants were final decision makers regarding Plaintiff's employment.

29. Plaintiff's salary at the time of his termination was $57,000 per year plus benefits.

30. On July 20, 2001, Plaintiff mailed a Tort Claims Notice to the Mayor of the City of Las Vegas pursuant to the New Mexico Tort Claims Act.

31. The individual Defendants' conduct against the Plaintiff was willful, wanton, malicious, and done with careless disregard for his constitutionally protected rights.

32. The Las Vegas City Charter, employment contract and personnel ordinance provide that the Plaintiff can only be removed for cause.

33. The Defendants' action on May 30, 2001 of terminating Plaintiff's employment

was not legislative action, in that, it did not involve enacting an ordinance, amending an ordinance, repealing an ordinance or other legislative functions of the City of Las Vegas.

34. Defendants knew on May 30, 2001, public employees have rights of free speech protected by the First Amendment to the United States Constitution.

35. Defendants knew on May 30, 2001, that public employees could not be terminated for speaking out on matters of public concern.

36. Defendants knew on May 30, 2001, that public employees who could only be removed for cause have property rights in their jobs protected by the United States Constitution.

37. Defendants knew on May 30, 2001 that public employees who have a protected right in a job must be provided a pre-termination notice and opportunity to answer any charges or evidence to be brought against them before termination.

38. Plaintiff has lost income, back pay, front pay, plus benefits, and he suffered other pecuniary losses, humiliation, and other compensatory damages to be proven at trial.

COUNT I
1983 DUE PROCESS VIOLATIONS

39. Plaintiff incorporates paragraphs 1 through 38 above as though fully set forth herein.

40. Plaintiff had a protected property right to his position as City Manager.

41. Defendants did not provide Plaintiff a pre-termination hearing.

42. Defendants did not provide Plaintiff a notice of charges or evidence to be presented against him regarding a decision to terminate his employment.

43. Defendants actions violated Plaintiff's due process rights protected by the United

States Constitution.

44. Defendants' conduct was willful, wanton, malicious and done in careless disregard for the Constitutionally protected rights of Plaintiff.

45. As a result of Defendants' violation of Plaintiff's Due Process Rights, Plaintiff has lost income, back pay, front pay, plus benefits, endured humiliation, and other compensatory damages to be proven at trial

WHEREFORE, Plaintiff seeks damages for lost income, back pay, front pay, plus benefits, humiliation, plus pre-judgment and post-judgment interest, attorney fees, costs, punitive damages and such other and further relief as the Court deems just and appropriate.

COUNT II
1983 VIOLATION FIRST AMENDMENT [FREE SPEECH]

46. Plaintiff hereby incorporates paragraphs 1 through 45 above as though fully set forth herein.

47. Plaintiff engaged in protected speech activity when he made written and oral statements, to Defendants, regulators and others regarding:

a. Defendant Gallegos' storing his personal recreational vehicle for free at a City Airport Hangar.

b. Defendant Romero's business preparation of building specs for Public Works projects and then receiving over 80% of those bids.

c. Favoritism shown toward relatives of Defendant Mike Trujillo in not collecting large unpaid utility bills.

48. All of the above matters affected public finance, potential public liability, security

and possible violations of Federal Rules and Regulations.

49. Plaintiff's actions constitute speaking out on matters of public concern.

50. Defendants' decision to terminate Plaintiff's employment was in part motivated by his exercise of his First Amendment, Free Speech Rights.

51. Plaintiff's conduct of speaking out on these matters of public concern did not unreasonably interfere with the operations of City Government.

52. The Defendants' actions against Plaintiff constitute violations of this First Amendment [Free Speech] rights.

53. Defendants' conduct was willful, wanton and malicious and done with careless disregard for Plaintiff's Constitutionally protected rights.

WHEREFORE, Plaintiff seeks damages for lost income, back pay, front pay, plus benefits, endured humiliation, plus pre-judgment and post-judgment interest, attorney fees, costs and such other and further relief as the Court deems just and appropriate.

COUNT III
BREACH OF CONTRACT

54. Plaintiff hereby incorporates paragraph 1 through 53 above as though fully set forth herein.

55. The Defendant City of Las Vegas, violated Plaintiff's written employment contract by terminating his employment for less than adequate cause.

56. Paragraph 3(A) of the employment contract provided that Plaintiff's employment can only be terminated for cause.

57. The Defendant terminated Plaintiff's employment in violation of the contract and

without specifying any cause as provided in the employment contract.

58. Plaintiff has suffered damages in the form of lost income, back pay, front pay, plus benefits, endured humiliation, and other compensatory damages to be proven at trial.

WHEREFORE, Plaintiff seeks damages for lost income, back pay, front pay, plus benefits, endured humiliation, plus pre-judgment and post-judgment interest, attorney fees, costs and such other and further relief as the Court deems just and appropriate.

COUNT IV
CONSPIRACY

59. Plaintiff hereby incorporates paragraph 1 through 58 above as though fully set forth herein.

60. The individual Defendants reached agreements among themselves to violate Plaintiff's rights protected by the United States Constitution in 42 U.S.C. §1983 and 1985.

61. The Defendants conspired against Plaintiff in retaliation for Plaintiff speaking out on matters of public concern which involved individual Defendants.

62. As a result of Defendants' conspiracy, Plaintiff's constitutional rights have been violated and he has suffered damages and losses.

WHEREFORE, Plaintiff seeks damages for lost income, back pay, front pay, plus benefits, endured humiliation, punitive damages, plus pre-judgment and post-judgment interest, attorney fees, costs and such other and further relief as the Court deems just and appropriate.

Respectfully submitted

J. EDWARD HOLLINGTON & ASSOCIATES, P.A.

By______________________________
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